

UNITED STATES COURT OF APPEALS
Filed 9/27/96
TENTH CIRCUIT

KAMILA SUE TAYLOR,

Plaintiff-Appellant,

v.

THE AETNA CASUALTY AND
SURETY CO.,

Defendant-Appellee.

No. 95-7140
(D.C. No. CIV-95-223-S)
(E.D. Okla.)

ORDER AND JUDGMENT*

Before **SEYMOUR**, Chief Judge, **PORFILIO** and **EBEL**, Circuit Judges

Kamila Sue Taylor brought this diversity action against The Aetna Casualty and Surety Co., the workers' compensation insurance carrier covering Ms. Taylor's husband, Ronnie Taylor, who died from an injury sustained in the course of his employment. Ms. Taylor alleged that Aetna intentionally and in bad faith withheld payments of workers' compensation death benefits to Ms. Taylor and her

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions 10th Cir. R. 36.3.

children.

The district court granted Aetna's motion to dismiss the action on the basis that Oklahoma only recognizes a bad faith action against a worker's compensation insurance carrier for failure to pay a final workers' compensation award. Ms. Taylor's claim relates only to the alleged bad faith of Aetna in intentionally delaying payment of her claim for benefits prior to the actual award of benefits by the Oklahoma Workers' Compensation Court.

We have carefully reviewed the Oklahoma cases in light of Ms. Taylor's arguments. We are not persuaded the Oklahoma Supreme Court would recognize a bad faith claim against a workers' compensation insurance carrier for intentionally delaying payment of benefits prior to the entry of an award of benefits by the Workers' Compensation Court. We therefore affirm the judgment of the district court. See Clinton v. Transportation Ins. Co., No. 94-5008, 1994 W.L. 408140 (10th Cir. 1994) (concluding award is prerequisite to bad faith workers' compensation claim in Oklahoma).

AFFIRMED.

ENTERED FOR THE COURT

Stephanie K. Seymour
Chief Judge